Supreme Court, U.S.
FILED

No. 10-837

In The

Supreme Court of the United States

RICHARD E WALBAUM

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

On Petition for a Writ Of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The U.S. Supreme Court in *Montello Salt Co. v. Utah*, 221 U.S. 452 (1911) and in subsequent cases, provided the rules for interpreting the meaning of the word "includes" which can have two different interpretations (enlargement or limitation). In *United States v. Latham*, 754 F.2d 747 (7th Cir. 1985), that Court held that the Supreme Court's interpretation was "preposterous", and the alternate interpretation was "obvious". Can a lower court preempt the Supreme Court's rules of interpretation, instead relying on a conflicting appellate court's interpretation, and what is the rule for determining when a conflicting alternate interpretation is "obvious" and not subject to the Supreme Court's rules of interpretation?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the court whose judgment is sought to be revised are listed in the caption.

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Richard E. Walbaum v. Commissioner of Internal Revenue, No. 09-3695 (8th Cir. 2010) Per Curiam (App. 2); Petition for Rehearing Denied (App. 14).

JURISDICTION

Judgment by the 8th Circuit Appellate Court was entered September 23, 2010 (App. 14).

Pursuant to Supreme Court Rule 10(c), this Court has jurisdiction because the 8th Circuit Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this Court. This Court has jurisdiction pursuant to 28 USC § 1254(1).

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

26 USC § 1402 – Definitions

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business.

...

26 USC § 3121. - Definitions (App. 20)

26 USC § 3401. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid - ... [which goes on to list numerous items which are not counted as wages]

...

(c) Employee

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

26 USC § 7701 – Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

...

(9) United States

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

...

(26) Trade or business

The term "trade or business" includes the performance of the functions of a public office.

U.S. Constitution, Art. 1 Sec. 2 Cl. 3 (App. 17)

U.S. Constitution, Art. 1 Sec. 8 Cl. 17 (App. 18)

U.S. Constitution, Art. 1 Sec. 9 Cl. 4

> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

The Classification Act of 1923 (42 Stat. 1488, Ch. 265) (App. 15)

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STATEMENT OF THE CASE

U.S. Tax Court's Jurisdiction

Pursuant to Title 26A, Rule 13. Jurisdiction:

> (a) ... the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, ...

The Commissioner issued notices of deficiency for 2003, 2004, and 2006. See U.S. Tax Court, Walbaum's Amended Petition, Exhibits A, B, and C respectively.

Court of Appeal's Jurisdiction

Pursuant to Title 26 § 7482

(a)(1)

The United States Courts of Appeals ... shall have exclusive jurisdiction to review the decisions of the Tax Court, ...

(b)(1)

... such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner, ...

Walbaum's legal residence is Iowa which is within the 8th Circuit.

Factual Background

This case is mainly centered around the

definition of terms, and whether a lower court's interpretation or the U.S. Supreme Court's interpretation of the word "includes" should be used.

The Internal Revenue Service ("IRS") issued Notices of Deficiency to Petitioner Walbaum for the tax years 2003, 2004, and 2006. Walbaum responded by filing a suit against the IRS in U.S. Tax Court, claiming monetary system fraud; by order of the Court, Walbaum filed an amended petition and abandoned the fraud position because a tax court could not deal with it.[1] Walbaum claimed among other things that Walbaum did not have any "wages" or "compensation" and was not an "employee", as those words are defined within the Internal Revenue Code ("IRC"). Walbaum filed corrected returns since the IRS's determination of deficiency was based on erroneous information returns issued by companies he worked for, who improperly interpreted the IRC.

The U.S. Tax Court ruled in favor of the IRS and did not accept, among other things not before this Court, the Supreme Court's interpretation of the word "includes" which would determine whether or not there is a tax liability.

Walbaum then appealed to the 8th Circuit Appellate Court and asked whether the IRS was attempting to impose a tax via federal jurisdiction of

1 The Tax Court's ruling nevertheless discussed the abandoned original position's claims. (App. 5)

Art. 1 Sec. 8 Cl. 17 (App. 18), which would also be determined by the interpretation of the word "includes". That Court chose a lower court's interpretation over the Supreme Court's, citing *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (argument that "employee" in 26 USC § 3401(c) does not include privately employed wage earners is a "preposterous" reading of the statute).

The Appellate Court ruled against Walbaum (App. 2), who then petitioned the Court for a rehearing, asking the Court the single request to parse the applicable IRC codes (those containing the word "includes") using the U.S. Supreme Courts rules of interpretation. The Court denied the petition (App. 14).

Walbaum will show that the Supreme Court's rules of interpretation provides a proper interpretation and is *not* preposterous.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Directly Conflicts with the Supreme Court's Rulings Regarding the Interpretation of the Word "Includes"

Walbaum is asking this Court to answer only one question: How is "includes" to be interpreted.

Motivation of Congress to Use Federally Connected Income as the Basis for Tax

Walbaum will show that Congress is using federal jurisdiction via Art. 1 Sec. 8 Cl. 17 (App. 18) as the basis to tax outside of that jurisdiction. What is the motivation of Congress to apply federal jurisdiction to those outside of that jurisdiction?

Under federal jurisdiction, the federal government has the same power as any state to lay a direct tax, and is not bound by the constitutional prohibitions of Art. 1 Sec. 2 Cl. 3 (App. 17), and Art. 1 Sec. 9 Cl. 4. Congress can redefine "income" and other terms to its hearts content, and is not bound by the definition of "income" which was settled in *Eisner v. Macomber*, 252 U.S. 189, 207 (1920)[2] at the time the 16th Amendment was passed, and could no longer be changed without changing the meaning of that Amendment. Freedom from constitutional restraints provides Congress with maximum taxing power.

---

2 "Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets...

How the Interpretation of the Word "Includes" Determines if a Tax is Applied Outside of Federal Jurisdiction

It is by use of the improper rule of interpretation by the lower courts that a tax intended to apply only within federal jurisdiction can be made to apply as well outside of it.

We start by looking at the definitions of "Wages" and "Employee" in the IRC:

26 USC § 3401. Definitions

> (a) **Wages**
>
> For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an **employee** for his employer, ... [emphasis added]
>
> ...

The definition of employee is:

> (c) **Employee**
>
> For purposes of this chapter, the term "employee" **includes** an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the

> foregoing. The term "employee" also includes an officer of a corporation.[3] [emphasis added]

In 26 USC § 3401(c), supra, the term "includes" can be interpreted one of two ways: enlargement or limitation. If interpreted as limitation, then only federal and subordinate entities following the word "includes" are employees. If interpreted as enlargement, "employees" will add to a purportedly pre-existing meaning the class of federal and state employees described. If the pre-existing meaning of "employee" has the general class as defined: "... any one who renders service to another... " [Bouviers Law Dictionary, 1914 Edition (employee)] may add to its class those who work for government.

The U.S. Supreme Court has commented on the use of the word "includes", and found it to be used both ways:

> ... the word 'including' is sometimes used merely to specify particularly that which belongs to the genus, and is sometimes used to add to the general class a species which does not naturally belong to it. [*Montello Salt Co. v.*

3 Compare to the common definition of "employee": A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance. [Black's Law Dictionary, 7th Edition (employee)]

Utah, 221 U.S. 452, 463 (1911)]

The Court decided its proper interpretation was as a means of limitation:

> The [Supreme Court of the state] also considered that the word "including" was used as a word of enlargement, the learned court being of opinion that such was its ordinary sense. With this we cannot concur. It is its exceptional sense, as the dictionaries and cases indicate. [*Montello Salt Co. v. Utah*, supra, at 466]

The Supreme Court stated that enlargement was its *exceptional* sense, which kept the door open for the use of enlargement as an exception to the rule. But there needs to be a statement informing the reader of such use, otherwise Congress could write one thing, and the courts interpret it as another at their discretion.

The IRS might argue that such a statement exists:

> 26 USC § 7701(c) Definitions
> (c) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term

defined.

The U.S. Supreme Court has clarified the meaning of the above when discussing the distinction between "means" and "includes":

> The natural distinction would be that where "means" is employed, the term and its definition are to be interchangeable equivalents, and that the verb "includes" imports a general class, some of whose particular instances are those specified in the definition. This view finds support in § 2 (b), which reads: "The terms 'includes' and 'including' when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined." This indicates that the particular is not necessarily a substitute for the general term, excluding more general meanings included within its scope. [*Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126 fn. 1 (1934)]

> ..."including" is not one of all embracing definition, but connotes simply an illustrative application of the general principle. [*Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941)]

That is, the enumerated items in a definition in which "including" is used "illustrate" – identify, and thus establish – the contours of the class which the defined term represents – the "general principle" of its application.

For example, if the word "Fruit" is defined: "When used in this paragraph, 'Fruit' includes turnips, carrots, and broccoli", one cannot presume that the term also means apples, since apples is not within the meaning of the term defined, it is a different category. If apples were intended to be included, the definition might say something like "... includes, in addition to all fruits, turnips...".

Similarly, when "employee" is defined as "includes an officer, employee, or elected official of the United States ...", the common quality of working for the government is a different category from those who work for any boss, which is not within the meaning of the term "employee" as defined.

The principle involved in the "includes" mechanism is largely that described by the Supreme Court in *Gustafson v. Alloyd Co.* (93-404), 513 U.S. 561 (1995):

> ...a word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with

its accompanying words, thus giving "unintended breadth to the Acts of congress."

The principle is clarified by these related rulings:

> When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. [*Stenberg v. Carhart*, 530 U.S. 914 (2000)]

> It is axiomatic that the statutory definition of the term excludes unstated meanings of that term. [*Meese v. Keene*, 481 U.S. 465, 484 (1987)]

> Of course, statutory definitions of terms used therein prevail over colloquial meanings. [*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490, 502 (1945)]

These rulings reflect the fact that when a word is redefined, its original meaning is entirely stripped away and replaced with the new meaning described. This is why the definition of "employee" explicitly lists "federal employees". The redefined term doesn't mean "those who work for a boss", or whatever dictionary definition you might find for the common word "employee" (by virtue of which federal employees would have been encompassed without being listed); nor does it mean "those who work for a

boss" plus the listed persons or types. It only means what the enumerated list describes -- in this case, persons working for the federal government or its subordinate entities, under a variety of different labels and capacities. The meaning of the redefined term "employee" can be considered to cover others not listed who also work for the federal government or its subordinate entities (and who are thus within the class established by the existing list), but no one else. These rules and statutory practices play an important role in preventing the "income" tax from functioning as a de facto capitation or other direct tax.

How "Includes" Is To Be Interpreted According to the U.S. Supreme Court

The IRS likes to encourage the notion that the term "includes" operates on what *precedes* "includes" (that is, the term being defined), rather than on what *follows* it (that is, the enumerated list providing the definition), and that what precedes "includes" has a meaning established elsewhere, with the words following the term "includes" allowing that preexisting definition to be supplemented by the addition of what follows in the enumerated list. This is purportedly so by virtue of the rule of construction at 7701(c): "Includes and including: The terms

'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined." Let's examine this proposition.

First notice that everything desired could be achieved by simply adding the word "also" in front of "includes" in any definition. Look, for instance, at the definition of "trade or business" at 26 USC 7701(a)(26) as it is used in 26 USC § 1402(a) (Net earnings from self-employment): "The term 'trade or business' includes the performance of the functions of a public office." Those who support the notion that "includes operates on the preceding thing" mean for this to be read as "The term 'trade or business' *also* includes the performance of the functions of a public office"; that is, the phrase "trade or business" is meant to be taken as retaining its conventional, everyday-speech meaning, while also covering the performance of the functions of a public office.

If this is how Congress meant this definition to be read, why isn't it simply written using "also" as above? Is it credible that when Congress meant to express:

"also includes"

it chose to do so by substituting the phrase:

"The terms 'includes' and 'including' when

> used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined"
>
> for "also"?

Congress is not known for clarity and conciseness in legislation, but it knows the meaning of "also", and uses it often. Congress knows how to say, "includes is not limiting", too, and could have used this as its rule of construction for "includes" if it really wished to have such a rule, and if that's what it meant the rule to communicate. The fact that Congress *does* know how to say "also", and "includes is not limiting" means that it *doesn't* mean either of these things when it says what it does in its "includes" rule, both as a matter of common sense and law:

> "[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, (1983)

Consider the implications of "other things otherwise within the meaning of the term defined". If what precedes "includes" is taken to have a preexisting definition which is retained, to which

what follows is simply added, those "other things" must already be within the preexisting definition, making the rule a tautology.

Further, there is no way of knowing what the alleged preexisting definition "being retained" actually is. We know that it can't be presumed to be the "dictionary definition" of the word that precedes "includes", because we see many examples in the tax law of definitions in which the enumerated list following "includes" contain things already within the "dictionary definition" of that word. For examples, see the following sections from 26 USC:

> § 3401(c) Employee
>
> "For purposes of this chapter, the term 'employee' includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."

> § 7701(a)
>
> (7) Stock
>
> The term "stock" includes shares in an association, joint-stock company, or insurance company.
>
> (8) Shareholder

The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

§ 3121

(g) Agricultural labor

For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

§ 7343. Definition of term "person"

The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Plainly, if "employee" had its dictionary definition to which what followed "includes" was to be added, federal employees would not be listed; they would

already be within the retained preexisting meaning The same is true of some or all of the enumerated items in the other examples given So, what *is* the "preexisting definition of 'employee' being retained" if it has to have "federal employees" added to it for them to be included in that definition? Or of "agricultural labor" if it doesn't already include "service performed on a farm"? Or of "person" if it doesn't cover particular individuals unless they are added to it by particular enumeration? They are clearly not the "dictionary definitions"

The rule of construction for "includes" doesn't even try to say that the *term defined* to which the enumerated items are being purportedly added retains its preexisting meaning It did not say it because it is *not* what is meant

"Includes" and its rule of construction at § 7701(c) is meant to operate on the enumerated list that follows "includes", not what precedes it That is, "includes", under the given rule of construction, simply provides for the potential expansion of the enumerated list which follows it with other things otherwise within the meaning established by that list

> "[T]he terms 'includes' and 'including' shall not be deemed to exclude other things otherwise within the meaning of the term

> defined." 26 USC § 7701(c). In light of this we apply the principle that a list of terms should be construed to include by implication those additional terms of like kind and class as the expressly included terms. *fn2: This follows from the canon noscitur a sociis. "a word is known by the company it keeps." *Neal v. Clark*, 95 U.S. 704, 708-09 (1878). *Brigham v. United States*, 160 F.3d 759 (1st Cir. 1998).

Further, the meaning established by that enumerated list *is* the "meaning of the term defined" (to which other things otherwise within that list-established meaning but not already mentioned -- that is, other things "of like kind and class" -- can be added).

> [T]he verb "includes" imports a general class, some of whose particular instances are those specified in the definition. This view finds support in § 2(b) of the Act, which reads: "The terms 'includes' and 'including,' when used in a definition contained in this title, shall not be deemed to exclude other things otherwise within the meaning of the term defined." *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 126 fn. 1 (1934)

As the Supreme Court says, the "includes" rule

means that a definition in which the term "includes"[1] is used is one of a "general class", the nature of which is illustrated (not added to) by the particular instances specified (enumerated). Since the enumerated items illustrate the class, they provide the term defined ("person", "employee", "trade or business", etc.) with its meaning. They are not being added to a preexisting meaning; rather they are particular instances illustrating the unique, custom meaning of the term being created for purposes of a given section, chapter, title, etc.

The court refers to and reiterates this observation in *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, (1941): "[I]ncluding... ...connotes simply an illustrative application of the general principle."

It's this simple: The "includes operates on what precedes it" proposition is simply erroneous. In fact, since there is not one trace of authority or even mere common sense supporting it, the proposition is more properly characterized as deceptive.

The IRS did not provide a rule or theory in opposition for interpreting "includes", other than citing the following lower court's opinion:

> Latham's instruction which indicated that under 26 U.S.C. § 3401(c) the category of "employee" does not include privately

> employed wage earners is a preposterous reading of the statute. It is obvious that within the context of both statutes the word "includes" is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others. *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985)

On the particular question of what makes an interpretation "obvious" or "preposterous", the *Latham* Court gave no arguments or citations to support it's conclusions, nor a rule to explain why the Supreme Court's rules should be superseded, and is therefore pure obiter dicta. And as a lower court interpretation in conflict with Supreme Court opinions, it must be discarded as controlling legal precedent.

Why the Supreme Court's Interpretation of "Includes" Is Not Preposterous

When we look at the earliest Revenue Acts, we see that the nature of the tax was on federally-connected receipts. With each iteration of the Revenue Acts, the nature of the tax on federally-connected receipts became more obscure.

Looking, for instance, at its application to work-

related earnings, we see the tax is levied on employees of the U.S. in the Revenue Act of 1862 (12 Stat. 432, Ch. 119):

> Sec. 86.
>
> ... there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, ... (App. 19)

When re-enacted in the Revenue Act of 1921 (42 Stat. 227, Ch. 136), we still see (in pertinent part) the tax levied on workers for the U.S.:

> Gross Income Defined:
>
> Section 213. That for the purposes of this title (except as otherwise provided in section 233 [Gross Income Of Corporations Defined]) the term "gross income"-
>
> (a) includes gains, profits, and income derived from salaries, wages, and compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska,

> Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such)... [4]

which goes on to list other sources from which "gains, profits, or income" might be derived.

The information about the levy being applicable only to workers within federal jurisdiction, was transferred to The Classification Act of 1923 (App. 15, described infra), allowing this information to be removed from subsequent iterations of the Revenue Acts. Thus, in the Revenue Act of 1928 (45 Stat. 791, Ch. 852) it now appears that the levy applies to all persons:

> SEC. 22. GROSS INCOME.
>
> (a) General definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, ...

The definition of "compensation" as used in the IRC is found in The Classification Act of 1923 (42 Stat. 1488, Ch. 265) – An Act To provide for the classification of civilian positions within the District of Columbia and in the field services (App. 15). To

4 Both Alaska and Hawaii did not become states until 1959.

arrive at the definition, one must parse through and substitute terms as relevant to arrive at the final definition of compensation, as follows [emphasis added in the following]:

> Sec. 2:
>
> ...
>
> The term "compensation" means any salary, wage, fee, allowance, or other emolument paid to an **employee** for **service** in a **position**.
>
> The term "**employee**" means any person temporarily or permanently in a position.
>
> The term "**position**" means a specific civilian office or employment, whether occupied or vacant, in a **department** other than the following: ...
>
> The term "**service**" means the broadest division of related offices and employments.
>
> The term "**department**" means an executive department of the United States Government, a governmental establishment in the executive branch of the United States Government which is not a part of an executive department, the municipal government of the

> District of Columbia, the Botanic Garden, Library of Congress, Library Building and Grounds, Government Printing Office, and the Smithsonian Institution.

By substituting terms as relevant (keeping pertinent parts), "compensation" is defined:

> The term "compensation" means any salary, wage, fee, allowance, or other emolument paid to an employee for service in a specific civilian office or employment, whether occupied or vacant, in an executive department of the United States Government, a governmental establishment in the executive branch of the United States Government which is not a part of an executive department, the municipal government of the District of Columbia, ...

By this definition compensation applies to federal workers or subordinate entities or instrumentalities only, and has been relocated from the IRC so readers will not know its true nature. This definition of compensation is quite different from that of the common definition given by Black's Law Dictionary, 7th Edition (compensation):

> Compensation: Remuneration and other benefits received in return for services

rendered; esp., salary or wages.

Even if the interpretation as laid down by the Supreme Court appears preposterous, it is because it was meant to, plus there is no law requiring Congress to pass non-preposterous laws. But the interpretation is reasonable, not preposterous. The above history of the income tax showed an apparent attempt to deceive by relocating salient code from the Revenue Act of 1928 into the Classification Act of 1923, making the Revenue Act of 1928 appear to apply to everyone, while it still applied only to those within federal jurisdiction as did the earlier Revenue Act of 1921. By using the Supreme Court's interpretation of "includes", today's Internal Revenue Code of 1986 is seen to substantially conform to the Revenue Act of 1921, indicating it is neither preposterous nor frivolous.

The Courts Must Interpret the IRC as Congress Wrote It

When Congress wrote the IRC, it must be assumed that Congress was aware of the proper interpretation of "includes" as defined by this Court, and the lower courts are obliged to interpret the IRC with the same intended meaning, and do not have the discretion to ignore it; it is the law:

Judicial discretion: The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act *when a litigant is not entitled to demand the act as a matter of right*. [Italics added; Black's Law Dict. 9th Ed. - discretion]

Consider the following two citations:

26 USC § 7701 – Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

(26) Trade or business

The term "trade or business" **includes** the performance of the functions of a public office. [emphasis added]

26 USC § 3121. - Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for **employment** ...

(b) **Employment**

For purposes of this chapter, the term "employment" means any service, ...

(A) (i) **within the United States**

(e) (2) United States

The term "**United States**" when used in a

> geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. [emphasis added]

Surely it is "obvious" that the above two citations use enlargement as the proper interpretation, and not the limitation rule required by the Supreme Court. Who would argue that a trade or business encompasses only the functions of a public office, or that the United States consists of only the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa? Case closed, the meaning is "obvious".

But now look at the following code which has identical construction to § 3121 supra. Notice how "United States" expressly contains "States":

> 26 USC § 7701. Definitions
>
> (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof --
>
> ...
>
> (9) United States
>
> The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

If "United States" already contained the States, it would not need to be included, which means that Congress knows how to include the States when it means to, and the code in § 3121 supra *did not* mean to. What we previously concluded as "obvious" is now in doubt. Can "States" be implied without being explicitly stated? The U.S. Supreme Court answered this question:

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. **In case of doubt they are construed most strongly against the government, and in favor of the citizen.** [*Gould v. Gould*, 245 U.S. 151 (1917)...] [emphasis added].

It creates confusion and uncertainty in the law and makes the code non-determinate, to break the rules of interpretation or change the meaning of words without giving the reader clear notice of such change. To use "obvious" as a rule of interpretation would begin the law's decent into chaos. The Supreme Court has declared that:

> No one may be required at peril of life, liberty or property to speculate as to the

> meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. ... [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. [*Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)]

Walbaum has shown an apparent attempt by Congress to deceive by relocating the salient portions of the Revenue Act of 1928 into the Classification Act of 1923, so it is not beyond Congress to give code an "obvious" meaning, and make the properly defined and interpreted meaning appear "preposterous". The only way to avoid confusion is to go by the words they used as those words are defined and interpreted by the rules. Any ambiguity in the above two citations (§ 3121(e)(2) and § 7701(a)(26)) could have been avoided by simply using the phrase "also includes"; but there is no ambiguity. What is written is what Congress meant, and it has constitutionally stood the test of time.

The proper parsing of § 3121, supra, according to the Supreme Court's rules is that § 3121 only applies to those within the federal jurisdiction of Commonwealth of Puerto Rico, the Virgin Islands,

Guam, American Samoa, or other regions of like kind and class illustrated by that enumerated list.

In parsing § 7701(a)(26), the functions of a public office encompass other functions of like kind and class, whatever those may be.[5]

Following the definitions as written will prevent an unauthorized capitation or other direct tax, keeping the IRC within constitutional bounds.

How People Outside Federal Jurisdiction Are Made to Have Federally Connected Income

If a company or person is outside of federal jurisdiction and therefore has no taxable federal income, but nevertheless asserts under penalty of perjury that the person has federal income, that forms a legal basis for the IRS to collect a tax on that person via federal jurisdiction.

When a company or person issues 1099, 1040, W2, W4 or other information return Forms, these Forms assert federal taxable income. This is by way of the terms "wages" and "compensation" as they are found on those Forms, and redefined within the Internal Revenue Code. The redefinition of those

---

5 "Trade or Business" was described in the prior section *How "Includes" Is To Be Interpreted According to the U.S. Supreme Court.*

terms is quite different from the common meaning, making an average company or person think the terms apply to privately employed wage earners, but actually applies to federally connected income.

The redefinition is artfully done by use of the word "includes" which can have two meanings, and quite remarkably shows up at just the right times within the IRC to provide the necessary ambiguity, with the correct interpretation made to appear preposterous.

Dated: December 10, 2010

Respectfully submitted,

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APPENDIX

Walbaum v. CIR, United States Court of Appeals, 8th Cir., No. 09-3695, Per Curiam, Filed July 23, 2010.....App. 2

Walbaum v. CIR, United States Tax Court, Order of Dismissal and Decision, Docket No. 9372-09, Entered July 17, 2009.....App. 5

Walbaum v. CIR, United States Court of Appeals, 8th Cir., No. 09-3695, Petition for Rehearing Denied, Filed September 23, 2010.....App. 14

The Classification Act of 1923 (42 Stat. 1488), Chap. 265. – An Act To provide for the classification of civilian positions within the District of Columbia and in the field services.....App. 15

U.S. Constitution, Art. 1 Sec. 2 Cl. 3 - Apportionment of representatives and direct taxes among the States.....App. 17

U.S. Constitution, Art. 1 Sec. 8 Cl. 17 - Congress has exclusive legislation over all federal places App. 18

Revenue Act of 1862 (12 Stat. 432, Ch. 119) Sec. 86 - Tax on those in the service of the U.S..App. 19

Revenue Act of 1928 (45 Stat. 791, Ch. 852) Sec. 22 - Definition of "Gross income".....App. 20

26 USC § 3121. - Definitions of Wages, Employment, State, and United States.....App. 20

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 09-3695

Richard E. Walbaum,	*	
	*	
Appellant,	*	
	*	Appeal from the United
v.	*	States Tax Court.
	*	
Commissioner of	*	[UNPUBLISHED]
Internal Revenue,	*	
	*	
Appellee.	*	

Submitted: July 1, 2010
Filed: July 23, 2010

Before WOLLMAN, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Richard Walbaum appeals the tax court's[1]

1 The Honorable Robert N. Armen, Jr., United States Tax Court Judge

dismissal of his petition challenging notices of deficiency for tax years 2003, 2004, and 2006. Walbaum argues that the tax court erred by refusing to accept his corrected tax returns, and by not shifting the burden of proof regarding the deficiencies to the IRS Commissioner; he also asserts several tax-protestor arguments. The Commissioner has moved for sanctions against Walbaum.

[page 2]

After careful de novo review, *see Norwood v. Dickey*, 409 F.3d 901, 903 (8th Cir. 2005) (de novo review standard); *Campbell v. Comm'r*, 164 F.3d 1140, 1142 (8th Cir. 1999) (taxpayer bears burden of proving that Commissioner's determination was erroneous), we conclude that the dismissal of Walbaum's petition was proper for the reasons stated by the tax court. We further conclude that the tax court was not required to shift the burden of proof regarding the deficiencies to the Commissioner, *see Scherping v. Comm'r*, 747 F.2d 478, 480 (8th Cir. 1984) (per curiam) (in deficiency actions Commissioner's determination is presumed correct, and petitioner bears burden to prove otherwise); *see also* 26 U.S.C. § 7491(a) (describing circumstances where burden shifts), and that the tax-protestor arguments raised by Walbaum are frivolous, *see United States v. Gerads*, 999 F.2d 1255, 1256 (8th Cir. 1993) (per curiam) (we have rejected, on

numerous occasions, tax-protestor argument that federal income tax is unconstitutional direct tax that must be apportioned; wages are within definition of income under Internal Revenue Code and Sixteenth Amendment, and are subject to taxation); *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (argument that category "employee" in 26 U.S.C. § 3401(c) does not include privately employed wage earners is "preposterous" reading of statute); *Denison v. Comm'r*, 751 F.2d 241, 242 (8th Cir. 1984) (per curiam) (rejecting as frivolous taxpayer's arguments that wages were not income and that Internal Revenue Code was unconstitutional).

Regarding the motion for sanctions, we may award "just damages" and single or double costs if we determine that an appeal is frivolous. *See* 28 U.S.C. § 1912; Fed. R. App. P. 38. In this case, we conclude that Walbaum has filed a frivolous appeal and that sanctions are appropriate. *See Gerads*, 999 F.2d at 1256-57 (granting government's motion for sanctions where appellant brought frivolous appeal based on tax-protester argument).

[page 3]

Accordingly, we affirm the dismissal, and we grant the Commissioner's motion for sanctions in the amount of $5000.00.

UNITED STATES TAX COURT

WASHINGTON, DC 20217

RICHARD E. WALBAUM

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 9372-09

ENTERED: July 17, 2009

ORDER OF DISMISSAL AND DECISION

This case is before the Court on respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 29, 2009.

Petitioner resided in the State of Iowa when the petition was filed with the Court.

Background

Petitioner purportedly seeks review of separate notices of deficiency that determined deficiencies in income taxes, as well as various additions to tax ("penalties"), for the taxable years 2003, 2004, and 2006. The deficiencies in income taxes are based on

respondent's determination that petitioner received compensation that he failed to report. The additions to tax are based on respondent's determinations that petitioner failed to file income tax returns, failed to pay income tax, and failed to pay estimated tax. See secs. 6651(a)(1), 6651(a)(2), and 6654 (a).[1]

In the Petition, petitioner does not deny receiving compensation during the years in issue, nor does he allege receiving compensation in any amount less than that determined by respondent in the notices of deficiency. See *Parker v. Commissioner*, 117 F.3d 785 (5th Cir. 1997); *White v. Commissioner*, T.C. Memo. 1997-459. Similarly, in the Petition,

petitioner does not allege facts raising a justiciable issue regarding any of additions to tax. Instead, petitioner challenges only the "debt-money system", which petitioner characterizes as "a mathematically flawed system and a violation of natural law." In that regard, petitioner pleads as follows:

> The issue of law to be determined is:
>
> • Does the power to tax include the power to steal or defraud?

---

1 All section references are to the Internal Revenue Code, as amended. All Rule references are to the Tax Court Rules of Practice and Procedure

The issue of fact to be determined:

• Is the government stealing via the design of the monetary system?

* * *

The issue of law to be decided:

• Does government have the power to create a monetary system that creates unpayable exponentially rising debt and the interest thereon, that places the people into a state of peonage and involuntary servitude?

* * *

The issue of law to be decided:

• While government may have wide discretion, does that discretion include design of a system that violates the religious principles of a large segment of society, and contrary to natural law?

4) Regarding my legal duty and responsibility to file and pay taxes:

The issue of law is stated:

All [citizens] alike owe allegiance to the government, and the government owes to them a duty of protection. These are reciprocal obligations, and each is a consideration for the

other. [Citation omitted.]

> Citizenship is membership in a political society, and implies the reciprocal obligations as compensation for each other of a duty of allegiance on the part of the member and a duty of protection on the part of the society. [Citation omitted.]

- 3 -

The issue of fact to be decided:

• Is government pillaging or plundering via the monetary system, instead of protecting?

As previously stated, on May 29, 2009, respondent filed a Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted. Thereafter, and pursuant to our Order dated June 2, 2009, petitioner filed both an Amended Petition and an Objection to respondent's motion on July 2, 2009.

In the Amended Petition, petitioner states, inter alia, as follows:

> 6. Petitioner disagrees with the IRS determination of deficiency because it is based on erroneous information returns issued or mandated by companies he worked for, as explained in the Answer [Objection] to Respondent's Motion to Dismiss. [Emphasis added.]

> 7. Petitioner asserts that the above-mentioned companies did not understand the I.R.C. [Internal Revenue Code] and its proper interpretation in light of court rulings, resulting in the filing of erroneous returns. Petitioner was also ignorant and did what he was told.

Petitioner attached to the Amended Petition copies of so-called "zero returns" dated June 25, 2009, on which he mischaracterizes Social Security and Medicare taxes withheld by his employer(s) as income tax and demands the refund thereof.[2] (By acknowledging that he was subject to withholding, petitioner necessarily acknowledges an employment relationship.) Petitioner also sets forth his theory that compensation earned by a "private sector individual" is not taxable; thus:

> The term "compensation for services" derives its meaning from The Classification

---

2 Social Security, Medicare, and other employment taxes are imposed by Subtitle C of Title 26 (Internal Revenue Code), whereas income tax is imposed by Subtitle A of Title 26. Neither Social Security nor Medicare tax is subject to the deficiency procedures, see Subchapter B (sees. 6211-6216) of Chapter 63 of Subtitle C, and employment taxes are generally not reportable on any form in the 1040 series (U.S. Individual Income Tax Return).

> Act of 1923 (see "service" and "compensation", 42 Stat. 1488, Ch. 265, Sec. 2, which clearly establishes that those who work in the federal government earn "compensation". Nothing is said about private sector individuals).

And insofar as self-employment is concerned, petitioner cites section 7701 (a) (26) and asserts that he is not subject to self-employment tax because he was not engaged in the performance of the functions of a public (i.e., governmental) office.[3]

In his Objection, petitioner acknowledges that there were "companies that Petitioner did work for", but he continues to allege that his compensation is not taxable, as argued in the Amended Petition.

Discussion

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted. We may grant such a motion when it appears beyond doubt that the party's adversary can prove no set of facts in support of a claim that would entitle him or her to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Price v. Moody*, 677 F.2d 676, 677 (8th Cir. 1982) .

Rule 34(b)(4) requires that a petition filed in this

3 Respondent has never asserted that petitioner holds public office or that petitioner is engaged in the performance of the functions of a public office

Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax in dispute. See *Gordon v. Commissioner*, 73 T.C. 736, 739 (1980). Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See *Jarvis v. Commissioner*, 78 T.C. 646, 658 (1982).

Any issue not raised in the assignments of error is deemed to be conceded. Rule 34(b)(4); *Jarvis v. Commissioner*, *supra* at 658 n.19; *Gordon v. Commissioner*, *supra*. Further, the failure of a party to plead or otherwise proceed as provided in the Court's Rules may be grounds for the Court to hold such party in default, either on the motion of another party or on the initiative of the Court. Rule 123(a). Similarly, the failure of a petition to

conform to the requirements set forth in Rule 34 may be grounds for dismissal. Rules 34(a) (1), 123(b) .

We consider petitioner's position in this case in the context of the Petition, the Amended Petition, and the Objection to respondent's motion to dismiss. Petitioner acknowledges having an employer, but his ultimate denial of compensation rests upon specious

arguments. Suffice it to say that petitioner, a resident of the State of Iowa, is a taxpayer subject to the Federal income tax who is obliged to file a Federal income tax return and pay Federal income tax on his compensation. See sees. 1, 61(a), 6012(a)(l), 7701(a)(l) and (14); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable."); see also *Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.").

Giving due regard to the statements contained in respondent's motion, which statements are incorporated in this order as the findings and analysis of the Court made in support of the ruling embodied herein, giving petitioner not only the benefit of every doubt as we are required to do at this stage of the proceeding, see *Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995), but wide pleading latitude as a pro se litigant, see *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), we find that the Petition and the Amended Petition filed in this case fail to raise any justiciable issue. Rule 40; see *Parker v.*

Commissioner, *supra* at 787; *White v. Commissioner*, *supra*.

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 29, 2009, is granted, and this case is hereby dismissed. It is further

[continued on next page]

ORDERED and DECIDED that there are deficiencies in, and additions to, petitioner's Federal income taxes as follows:

Year	Deficiency
2003	$ 2,721.00
2004	3,704.00
2006	12,528.00

	Additions to tax		
Year	Sec. 6651(a)(1)	Sec. 6651(a)(2)*	Sec. 6654(a)
2003	$ 604.35	$ 671.50	-
2004	833.40	796.36	$106.14
2006	2,818.80	1,190.16	592.87

*Computed through the date of the notice of deficiency. See sec. 6651(a)(2).

Robert N. Armen, Jr,
Special Trial Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 09-3695

Richard E. Walbaum

Appellant

v.

Commissioner of Internal Revenue

Appellee

Appeal from Tax Court, Internal Revenue Service
(9372-09)

ORDER

The petition for rehearing by the panel filed by the appellant is denied.

September 23, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

The Classification Act of 1923

[42 Stat. 1488], Chap. 265. – An Act To provide for the classification of civilian positions within the District of Columbia and in the field services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Classification Act of 1923."

Sec. 2. That the term "compensation schedules" means the schedules of positions, grades, and salaries, as contained in section 13 of the Act.

The term "department" means an executive department of the United States Government, a governmental establishment in the executive branch of the United States Government which is not a part of an executive department, the municipal government of the District of Columbia, the Botanic Garden, Library of Congress, Library Building and Grounds, Government Printing Office, and the Smithsonian Institution.

The term "head of the department" means the officer or group of officers in the department who are not subordinate or responsible to any other officer of the

department.

The term "board" means the Personal Classification Board established by section 3 hereof.

The term "position" means a specific civilian office or employment, whether occupied or vacant, in a department other than the following: Offices or employments in the Postal Service; teachers, librarians, school attendance officers, and employees of the community center department under the Board of Education of the District of Columbia; officers and members of the Metropolitan police, the fire department of the District of Columbia, and the United States park police; and the commissioned personnel of the Coast Guard, the Public Health Service, and the Coast and Geodetic Survey.

The term "employee" means any person temporarily or permanently in a position.

The term "service" means the broadest division of related offices and employments.

The term "grade" means a subdivision of a service, including one or more positions for which approximately the same basic qualifications and compensation are prescribed, the distinction between grades being based upon differences in the importance, difficulty, responsibility, and value

of the work.

The term "class" means a group of positions to be established under this Act sufficiently similar in respect to the duties and responsibilities thereof that the same requirements as to education, experience, knowledge, and ability are demanded of incumbents, and the same schedule of compensation is made to apply with equity.

The term "compensation" means any salary, wage, fee, allowance, or other emolument paid to an employee for service in a position.

[The remainder of the act is omitted.]

U.S. Constitution, Art. 1 Sec. 2 Cl. 3

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such

Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

U.S. Constitution, Art. 1 Sec. 8 Cl. 17

The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of congress become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

Revenue Act of 1862 (12 Stat. 432, Ch. 119)

Sec. 86. And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such a duty, as aforesaid, shall

be made to exhibit the fact of such payment.

Revenue Act of 1928 (45 Stat. 791, Ch. 852)

SEC. 22. GROSS INCOME.

(a) General definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) Exclusions from gross income.—The following items shall not be included in gross income and shall be exempt from taxation under this title: ... [Which then goes on to list items not included in gross income]

26 USC § 3121. - Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all

remuneration (including benefits) paid in any medium other than cash, except that such term shall not include – [various pre-tax deductions]

(b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)),

(c) State, United States, and citizen

For purposes of this chapter -

(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.